THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.Nos.26987 of 2005 and 1556 of 2006

DATED: 30.11.2007

W.P.No.26987 of 2005:

Between:

A. Prabhakara Gupta

.. Petitioner

And

Chairman & Managing Director, Central Power Distribution Company of A.P. Limited, Red Hills, Hyderabad and others

.. Respondents

W.P.No.1556 of 2006:

Between:

A. Prabhakara Gupta

.. Petitioner

And

Chief General Manager (H.R.D.), Central Power Distribution Company of A.P. Limited, Red Hills, Hyderabad and others

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.Nos.26987 of 2005 and 1556 of 2006

COMMON ORDER:

W.P.No.26987 of 2005:

This writ petition is filed seeking a Mandamus declaring the order in Memo No.DS(Per)/AS(Per)/PO(DC)/579-C2/2001, dated 01.09.2005, issued by the 1st respondent, as arbitrary, illegal, contrary to the A.P. State Electricity Board Employees Discipline and Appeal Regulations, and violative of principles of natural justice, and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. It appears, the petitioner, while serving as U.D.C./Cash with the respondent Corporation at Electricity Revenue Office (Town), Kurnool, was placed under suspension on the allegation of misappropriation of Corporation's funds. It is the grievance of the petitioner that though he was suspended and enquiry was contemplated against him, subsistence allowance was not paid to him and he also submitted representations to the respondents seeking payment of subsistence allowance, expressing his inability to attend the enquiry as he was in financial distress, but in vain. Thus, as a result of non-payment of subsistence allowance, he could not attend the enquiry and the

enquiry was conducted ex parte and, ultimately, he was removed from service, by the impugned memo, dated 01.09.2005, of the 1st respondent.

3. Respondents admitted the receipt of representation, dated 19.08.2003, made by the petitioner, ventilating his grievance about his inability to attend the enquiry due to non-payment of subsistence allowance. Thus, it is clear that, during the suspension period, the petitioner was not paid subsistence allowance as required under the law, in spite of representations made by him, and, thus, he could not attend the enquiry and the enquiry was conducted ex parte.

4. There is no necessity of going into all the details.

5. The facts narrated and admitted would indicate that the enquiry conducted is vitiated. In this regard, learned counsel for the petitioner placed reliance on a Judgment in **Ghanshyam Das Shrivastava v. State of Madhya Pradesh**[1], wherein it was held that where delinquent had specifically communicated his inability to attend the enquiry due to paucity of funds resulting from non-payment of subsistence allowance, the enquiry was vitiated for his non-participation. No adverse inference as to his sources of income could be drawn from the fact that he did not state them in his affidavit in the writ petition or from the fact that he challenged his dismissal by writ petition immediately after his dismissal and subsequently came in appeal before the Supreme Court.

6. In view of the above, I am of the opinion that the issue that arises for consideration in this writ petition is squarely covered by the above said Judgment and, therefore, following the same, this writ petition is

also liable to be allowed.

7. Accordingly, the impugned order, dated 01.09.2005, is set aside and the respondents are directed to reinstate the petitioner, if he has not attained the age of superannuation as of now. However, this will not preclude the respondents from conducting a detailed enquiry into the allegations levelled against the petitioner, after payment of subsistence allowance due to him, as per his eligibility. If, in the meanwhile, the petitioner retired from service on attaining the age of superannuation, he is entitled for all the benefits till the date of his retirement.

8. The writ petition is, accordingly, allowed. No costs.

W.P.No.1556 of 2006:

In view of the orders passed in the above writ petition, no further orders need be passed in this writ petition and the same is liable to be closed.

Accordingly, the writ petition is closed. No costs.

JUSTICE C.V. RAMULU

30th November, 2007.

IBL

[1] AIR 1973 SC 1183